

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11cv47**

GLEN STEVEN GOAD,

Plaintiff,

v.

TEFRON USA, INC.,

Defendant.

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ORDER

Plaintiff brought this suit in the Superior Court of Burke County alleging that Defendant “promised” to provide a severance package upon the termination of his employment and defrauded him by making such statements. Defendant removed the action to this Court. Defendant contends that the Court has original jurisdiction over this case pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”). An ERISA plan, however, must be maintained pursuant to a written instrument. 29 U.S.C.A. § 1102(a)(1). Moreover, an oral communication is inadequate to alter the written terms of an ERISA plan. See Sargent v. Holland, 114 F.3d 33, 37 (4th Cir. 1997). Neither the Complaint nor Defendant’s Notice of Removal indicate that any such written ERISA plan is applicable to Plaintiff. Instead, it appears that Plaintiff alleges that Defendant and Plaintiff had an oral employment agreement that included a severance package. The Court questions whether such allegations, absent a written ERISA plan applicable to Plaintiff, vest this Court with jurisdiction to hear this dispute.

Accordingly, the Court **DIRECTS** the Defendant to **SHOW CAUSE** by April 8, 2011, why the Court should not recommend to the district court the remand of this case. Defendant's memorandum shall not exceed ten (10) pages. Plaintiff shall have until April 15, 2011, to file a response, not to exceed fifteen(15) pages. Defendant shall have until April 22, 2011, to file a reply, not to exceed five (5) pages.

Signed: April 1, 2011

A handwritten signature in cursive script, reading "Dennis L. Howell", written over a horizontal line.

Dennis L. Howell
United States Magistrate Judge

